Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

HUMBERTO RODRIGUEZ,

Petitioner,

v.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition for Writ of Certiorari to the Appellate Court of Illinois, First District

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. Whether the appellate court, on its own initiative, may rule that the Petitioner lacked standing to mount his fourth amendment claim where the issue went unchallenged by the State both at the trial court level and in its brief on appeal.

II. Whether the fact that the arresting officer, Officer Granias, was under federal investigation for falsifying facts in at least two search warrant affidavits concerning information that he claimed to have received from certain confidential informants about narcotics activity at the locations for which he sought the search warrants was relevant to the officer's credibility at the hearing on the motion to quash arrest and suppress evidence and therefore a proper area of cross-examination by defense counsel.

III. Whether the confidential informant's reliability and basis of knowledge were relevant to the probable cause determination and therefore a proper area of cross-examination by defense counsel.

PARTIES INVOLVED

The parties to the proceedings below were Humberto Rodriguez, Defendant-Appellant in 93-3450, Saleem Muhammed, co-defendant, and the State's Attorney's Office for Cook County, Plaintiff-Appellee in 93-3450.

The parties to this petition are Petitioner, Humberto Rodriguez, and the Respondent, People of the State of Illinois through Attorney General for the State of Illinois, James E. Ryan.

TABLE OF CONTENTS

Questions Presented for Review 1
Parties Involved 3
Table of Contents 4
Table of Authorities 6
Opinions Below 7
Jurisdiction 8
Constitutional Provisions Involved 8
Statement of the Case 10
Reasons for Granting Certiorari 14
Conclusion 26
Appendix A A-1
Appendix B B-1
Appendix C C-1

I. Certiorari should be granted because the appellate court's ruling that the Petitioner lacked standing to mount his fourth amendment claim-an issue that went unchallenged by the State both at the trial court level and in its brief on appeal-violates the Petitioner's rights to be secure against unreasonable searches and seizures and to the due process of law.

II. Certiorari should be granted because the trial court's ruling prohibiting Petitioner from cross-examining the arresting officer, Officer Granias, about the fact that he was under federal investigation for falsifying facts in at least two search warrant affidavits concerning information that he claimed to have received from certain

confidential informants about narcotics activity at the locations for which he sought the search warrants denied Petitioner his rights to cross examine witnesses and to the due process of law.

III. Certiorari should be granted because the trial court's ruling prohibiting Petitioner from questioning the arresting officers about the veracity, reliability and basis of knowledge of their confidential informant denied Petitioner his rights to be secure against unreasonable searches and seizures and to the due process of law.

CONCLUSION 26

Appendix A: Order of the Illinois Appellate Court, First Judicial District, Second Division, December 29, 1995 affirming the judgment of the Circuit Court.

Appendix B: Order of the Illinois Supreme Court denying Petition for Leave to Appeal.

Appendix C: Order of the Supreme Court of the United States Allowing Application for Extension of Time Within Which to File a Petition for Writ of Certiorari.

TABLE OF AUTHORITIES

Combs v. U.S., 408 U.S. 224, 33 L.Ed.2d 308,
92 S.Ct. 2284 (1972) 14, 16

Chambers v. Mississippi, 410 U.S. 284,
35 L.Ed.2d 297, 93 S.Ct. 1038 (1973) 17, 18, 20

Delaware v. Van Arsdall, 475 U.S. 673,
89 L.Ed.2d 674, 106 S.Ct. 1431 (1986) 17, 18

U.S. v. Hodge, 19 F.3d 51 (D.C. Cir. 1994) . 17, 18, 19

Illinois v. Gates, 462 U.S. 213, 76 L.Ed. 2d 527,
103 S.Ct. 2317 (1983) 21, 22

Ornelas v. U.S., 517 U.S. , 134 L.Ed.2d 911,
116 S.Ct. (1996) 21, 22

Steagald v. U.S., 451 U.S. 204, 68 L.Ed.2d 38,
101 S.Ct. 1642 (1981) 14, 15

IN THE

SUPREME COURT OF THE UNITED STATES

HUMBERTO RODRIGUEZ, Petitioner

vs.

PEOPLE OF THE STATE OF ILLINOIS,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT

Petitioner Humberto Rodriguez respectfully requests that a writ of certiorari issue to review the judgment and order of the Appellate Court of Illinois entered on December 29, 1995, affirming petitioner's conviction for possession of a controlled substance with intent to deliver.

OPINION BELOW

The order of the Illinois Appellate Court, First District was not published pursuant to Illinois Supreme Court Rule 23. The order is reprinted in Appendix A, attached hereto and incorporated herewith.

Petitioner unsuccessfully sought leave to appeal to the Illinois Supreme Court, and a copy of the notice denying him leave to appeal is attached as Appendix B.

JURISDICTION

The final judgment of the Illinois Appellate Court, First District, in *People v. Humberto Rodriguez*, was entered in an order filed on December 29, 1995. Petitioner's petition for leave to appeal to the Illinois Supreme Court was denied on June 5, 1996.

The jurisdiction of this Court to review the judgment of the Illinois Appellate Court is invoked under 28 U.S.C. Section 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

AMENDMENT IV

The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for

obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On January 16, 1991, a confidential informant spoke over the phone to Chicago Police Officers Thomas Granias and Anthony Opiola, both of whom were assigned to the Drug Enforcement Administration (DEA). The informant revealed that between 6:00 and 6:30 p.m. that evening a man named Pepito would drive a red and white Blazer to the area of 4224 North Ashland where he was to pick up 20 kilos of cocaine.

The officers traveled to Ashland and Irving Park Road where they met with the informant. After repeating what had been stated on the telephone, the informant added that the red and white Blazer had no license plates and that Pepito was a Hispanic male, 6 feet tall, 250 pounds and wearing a lot of gold. Officers Granias and Opiola then called the DEA. They wanted to set up a surveillance and needed more officers.

A little more than one half hour after the surveillance of 4224 North Ashland had been set up, Officer Opiola spotted a red and white Blazer with no license plates driving nearby. The Blazer, which was being followed by a blue Ford Explorer, turned into an alley just off Ashland Avenue. Both vehicles parked behind 4224 North Ashland.

Alone, and on foot, Officer Granias entered the alley. The Blazer was empty but co-defendant Saleem Muhammed was sitting in the driver's seat of the Explorer. Granias walked past the vehicles and entered the

stairwell of a nearby building. Through the windows, he watched.

According to Granias, what he saw through the windows was the Petitioner walking from the vicinity of the rear of 4224 North Ashland, carrying a blue nylon gym bag. Granias did not see the Petitioner in the building at 4224 North Ashland but he did see that the gym bag was zippered shut.

The Petitioner went to the driver's side of the Explorer and handed Mr. Muhammed the bag at which time, Granias claims that, from inside the stairwell of a nearby building and through the window, he heard the Petitioner tell Mr. Muhammed to "be careful." The Petitioner then returned to his Blazer and both he and Mr. Muhammed drove away.

Granias radioed his brother officers, alerting them to the fact that Petitioner and Mr. Muhammed were leaving. Opiola followed Petitioner and Granias followed Muhammed. Granias lost sight of Muhammed for a short period, but found him again at 3100 North Ashland. Granias claimed that he walked up to Muhammed's vehicle which was stopped for a red light, tapped on the window, and displayed his police identification. Muhammed rolled down his window. As Muhammed began talking to Granias, Granias claimed that he noticed the blue gym bag that he had seen Petitioner hand to Muhammed earlier. According to Granias, this gym bag which had previously been zippered shut and which would soon be found to contain a large quantity of cocaine was

now open and perched on the seat next to Muhammed. While the bag was not open enough for Granias to see inside and recognize the actual contents of the bag, Granias explained that the bag was open enough for him to observe a clear rectangular package with "Star 500" written on it, which, given his experience, told him that the bag contained cocaine.

Granias seized the bag and field tested its contents. It tested positive for cocaine. He radioed Opiola who immediately placed Petitioner under arrest.

Petitioner was charged with possession of a controlled substance with intent to deliver. Prior to trial, Petitioner filed a motion to quash arrest and suppress evidence. Officers Granias and Opiola testified as defense witnesses. The substance of their testimony was consistent with the above. The trial court denied the motion.

Following denial of the motion, counsel for Petitioner received *Brady v. Maryland* material from the federal government in a criminal case unrelated to Petitioner's matter. This *Brady* material involved a federal grand jury investigation into allegations that Officer Granias had on at least two prior occasions perjured himself regarding the existence of informants. Based on this material, counsel for Petitioner filed a motion for reconsideration of the denial of the motion to quash arrest and suppress evidence and to strike the testimony of Officer Granias. The motion was denied.

Defendant's trial proceeded by way of stipulation, after which he was sentenced to 15 years imprisonment in the Illinois Department of Corrections.

Defendant appealed his conviction. On appeal to the Illinois Appellate Court, First District, he argued that the trial court erred in preventing him from questioning Officer Granias about his informant's basis of knowledge, in finding that the State had proven his guilt beyond a reasonable doubt; and in preventing him from questioning Officer Granias about the allegations that Officer Granias had on at least two prior occasions perjured himself regarding the existence of informants.

In a fourteen page order, the Illinois Appellate Court rejected the Petitioner's arguments and affirmed his conviction. As part of its ruling, however, the appellate court noted that the denial of the Petitioner's motion to quash arrest and suppress evidence was proper because the Petitioner lacked standing. The appellate court, on its own initiative, raised this issue. The State argued standing neither at the motion to quash arrest nor in its appellee's brief.

Petitioner unsuccessfully petitioned the Illinois Supreme Court for leave to appeal. Following rejection of that petition and a granting of an application for extension of time by this Court to file a petition for writ of certiorari, Petitioner filed the instant petition.

REASONS FOR GRANTING CERTIORARI

I. The appellate court's ruling that the Petitioner lacked standing to mount his fourth amendment claim-an issue that went unchallenged by the State both at the trial court level and in its brief on appeal-conflicts with this Court's decisions in both *Combs v. U.S.*, 408 U.S. 224, 33 L.Ed.2d 308, 92 S.Ct. 2284 (1972) and *Steagald v. U.S.*, 451 U.S. 204, 68 L.Ed.2d 38, 101 S.Ct. 1642 (1981).

In *Combs*, this Court ruled that the Court of Appeals erred in concluding that the Petitioner lacked the requisite standing to mount his fourth amendment claim. *Combs*, 408 U.S. at 228. Petitioner's standing had never been challenged and therefore he had never been made to argue the issue. Poignantly, this Court observed that

> "petitioner's failure to make any such assertion [regarding a possessory or proprietary interest in the searched area], either at the trial or at the pretrial suppression hearing, may well be explained by the related failure of the Government to make any challenge in the District Court to petitioner's standing to raise his Fourth Amendment claim." *Id.* at 311.

The fairness of the principle recognized in *Combs* can also be sensed in this Court's decision in *Steagald v. U.S.*. In *Steagald*, this Court expressly rejected the Governments efforts to raise the issue of standing for the first time on appeal. *Steagald*, 451 U.S. at 450, 451.

Noting that the argument had never been raised by the Government in the courts below, this Court announced that the Government

> "may lose its right to raise factual issues of this sort [standing] before this Court when it has made contrary assertions in the courts below, when it has acquiesced in contrary findings by those courts, or when it had failed to raise such questions in a timely fashion during the litigation." *Id.* at 209.

The lesson from *Combs* and *Steagald* teaches that the decision reached by the Illinois Appellate Court in the Petitioner's case went too far. The record in Petitioner's case makes amply clear that the issue of Petitioner's standing to make his fourth amendment claim was never challenged by the State. The State did not argue against standing at the trial court level nor did it make such an argument on appeal. This stands in sharp contrast to *Combs* as well as *Steagald* where the Government argued the standing issue for the first time in its brief to this Court.

By ruling against the Petitioner in its order, the appellate court has effectively excused the State's failure to act and has stepped into the shoes of the State as an advocate for the People. While the appellate court is charged with the duty of reviewing the actions taken by the respective parties at the trial court level, that duty does not extend to acting as a surrogate for such parties.

Furthermore, it is not clear that the appellate court has not presumed too much. It is not clear that, in fact, the State's decision to refrain from objecting on standing grounds was not a tactical decision or because it, too, like the Petitioner, believed that standing was not in issue. The Petitioner, who sought to assert his fourth amendment rights in an instance where it appeared to him that a violation had occurred, must not be held to argue both his side and that of the State. The message that is sent by the appellate court's order is that the accused who seeks to vindicate his rights under the fourth amendment must now not only produce evidence in support of his position as well as answer to the challenges made by the government, but must also anticipate and answer to those challenges not made by the government.

Finally, by picking apart the Petitioner's arguments and finding fault where the Petitioner's opponent—the State—did not even see fit to mount a challenge and then ruling against the Petitioner, the appellate court has added insult to injury. The appellate court has ruled against the Petitioner on an insufficient record without even considering, as was mentioned in *Combs,* that what may appear as a deficiency in the record in regards to the factual determination of standing "may well be explained by the related failure of the Government to make any challenge," to the Petitioner's standing. *Combs,* 408 U.S. at 227.

Had the Petitioner been challenged by the State regarding the standing issue then he would have been able to produce whatever evidence he had available in support

of standing. But by ruling against the Petitioner on an issue that had gone uncontested in the courts below and without allowing him the benefit of producing whatever evidence he may have available, the appellate court has demonstrated that fairness and equity in the litigation of our constitutional rights are a reasonable price to be paid for the convenience that comes with finality in the decision making process.

The Petitioner does not ask that the merits or lack thereof of his fourth amendment claim be assumed or overlooked but rather that he simply be allowed the opportunity to fully and fairly litigate them.

II. The appellate court's ruling that the trial judge did not abuse his discretion in preventing counsel for the Petitioner from cross-examining Officer Granias about the fact that he was under federal investigation for falsifying facts in at least two search warrant affidavits concerning information that he claimed to have received from certain confidential informants about narcotics activity at the locations for which he sought the search warrants conflicts with the opinion of the District of Columbia Circuit Court of Appeals in *U.S. v. Hodge* as well as the principles of the accused's right to cross-examination as articulated in this Court's opinions in *Chambers v. Mississippi* and *Delaware v. Van Arsdall*. *U.S. v. Hodge*, 19 F.3d 51 (D.C. Cir. 1994); *Chambers v. Mississippi*, 410 U.S. 284, 35 L.Ed.2d 297, 93 S.Ct. 1038 (1973); *Delaware v. Van Arsdall*, 475 U.S. 673, 89 L.Ed.2d 674, 106 S.Ct. 1431 (1986).

The right to cross-examine witnesses has long been recognized as essential to due process. *Chambers,* 410 U.S. at 294. It is more than a desirable rule of procedure. It is implicit in the constitutional right of confrontation, and helps assure the accuracy of the truth-determining process. *Id.* at 295. Its denial or significant diminution calls into question the ultimate integrity of the fact-finding process. *Id.*

The right to cross-examine includes the opportunity to test the witness' recollection, to probe into the details of his testimony or to sift his conscience so that the finder of fact might judge for itself whether the witness' testimony is worthy of belief. *Id.* Further, the exposure of a witness' motivation or bias in testifying is a proper and important function of the constitutionally protected right of cross-examination because it exposes to the jury the facts from which jurors could appropriately draw inferences relating to the reliability of the witness. *Van Arsdall,* 475 U.S. at 680.

The court in *Hodge* well understood these principles of cross-examination. It remanded the case to the district court for a new evidentiary hearing on the defendant's motion to suppress for the exact reason that he had not been allowed to sufficiently crossexamine the arresting officers. *Hodge,* 19 F.3d at 53.

At issue in *Hodge* was whether the police had violated Hodge's rights under the fourth and fourteenth amendments by searching his bag. The defense tried repeatedly to question the officers on matters relevant to

the question of whether the search of the defendant's bag was proper. The trial court, however, sustained each objection made by the Government. Id. at 52, 53.

On appeal, the Circuit Court of Appeals for the District of Columbia ruled that the District Court had improperly limited the defense cross-examination. *Id.* at 53. The court noted that while the Government had the burden of proving that the search was reasonable within the context of the fourth amendment, "the defendant had the right to cross-examine the government's witnesses" because "a suppression hearing is a critical stage of the prosecution affecting substantial rights of the accused." *Id.* The court ruled that because the testimony that the defense sought to elicit through cross-examination was relevant to the issues raised in the motion to suppress, the limitations imposed by the District Court on that cross-examination had denied the defendant his right to cross-examination. *Id.*

The logic of the *Hodge* decision compels a similar result when applied to the facts in Petitioner's case. Officer Granias, the arresting officer, was under federal grand jury investigation at the time of the hearing on the motion to quash arrest and suppress evidence in this matter. The allegations against him were that he had misrepresented facts in at least two search warrant affidavits concerning information that he claimed to have received from certain confidential informants about narcotics activity at the locations for which he sought the search warrants.

In an unrelated case in the United States District Court, Northern District, Illinois, Granias informed the court that he would exercise his fifth amendment privilege should the suppression hearing in that case be reopened and he be questioned about the federal investigation. As a consequence, his testimony was stricken.

The significance of the federal grand jury investigation to Petitioner in this matter flows directly from the similarities between the two situations. Granias was under investigation for falsifying search warrant affidavits as they pertained to information he claimed to have received from confidential informants. Similarly, here, he claimed that it was the information he received from a confidential informant that drew his attention to the Petitioner and Mr. Muhammed. Certainly, this cannot be dismissed out-of-hand as mere coincidence which is the path that the appellate court chose to follow. Whether the allegations in the federal investigation were founded or unfounded, allowing defense counsel to cross-examine Granias was necessary to "assure the accuracy of the truth-determining process" in this case. *Chambers*, 410 U.S. at 295. It was essential to making a reliable assessment of Granias' credibility.

The allegation that Granias may have misrepresented facts in the past to "make a case" bears directly on the facts that he testified to in Petitioner's case. Only cross-examination could yield a satisfactory answer to the question of whether he had misrepresented facts to "make a case" against the Petitioner. If Granias could have been shown to lack credibility on the issue of the

informant in Petitioner's case, his credibility on all of the other points testified to would have similarly been thrown into doubt.

The credibility of Officer Granias was of the utmost importance. It was the key to the State's case. The State's case against Petitioner was built exclusively on the testimony of Granias. Granias and only Granias was privy to the alleged actions and statements of Petitioner and Mr. Muhammed in the rear area behind 4224 North Ashland. Without the benefit of corroboration of the claimed observations and in light of the striking similarities between the allegations against Granias in the federal investigation and the facts of this case, it is too much to ask that Granias' testimony be pardoned from the only meaningful method of assuring the accuracy of the truth - determining process: cross-examination.

The defense in this case should have been allowed the opportunity to cross-examine Officer Granias about the allegations made in the federal grand jury investigation because they bore directly on the credibility of the State's most important witness, without whom, proving guilt beyond a reasonable doubt would not have been possible.

III. The appellate court's ruling that the confidential informant's reliability and basis of knowledge were irrelevant to the probable cause determination and that the trial court was therefore justified in prohibiting defense counsel from questioning the officers about these issues stands in sharp contrast to the decisions of this Court in *Ornelas v. U.S.* and *Illinois v. Gates. Ornelas v. U.S.*, 517

U.S.____, 134 L.Ed.2d 911, 116 S.Ct. (1996); *Illinois v. Gates*, 462 U.S. 213, 76 L.Ed. 2d 527, 103 S.Ct. 2317 (1983).

In *Ornelas*, this Court identified the framework within which a determination of reasonable suspicion or probable cause must be made.

> "The principal components of a determination of reasonable suspicion or probable cause will be the events which occurred leading up to the stop or search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer amount to reasonable suspicion or probable cause." *Ornelas*, 134 L.Ed.2d at 919.

The importance of the historical facts in this case, wherein Officer Granias claims to have received information from what he refers to as a confidential informant which eventually leads him to the Petitioner, to the determination of probable cause can best be seen in light of the teachings in *Gates*.

Under *Gates*, the standard for determining whether the facts in question add up to probable cause is the totality of the circumstances. *Gates*, 462 U.S. at 238. However, when the question is whether the story of an informant establishes probable cause, the veracity, reliability, and basis of knowledge of the informant are all

highly relevant factors to be included in the totality of circumstances mix. *Id.* at 230-234.

What these cases demonstrate is that the appellate court in Petitioner's case failed to see the big picture. The appellate court skipped part one of the *Ornelas* analysis and jumped right to part two-application of the rule of law to the facts. The appellate court missed completely the development of the historical facts which led up to the arrest now under challenge.

The proper view for the appellate court, as well as the trial court, to have taken was to consider the historical facts of this case in light of Granias' informant's veracity, reliability and basis of knowledge. After all, the facts that led up to the Petitioner's arrest cannot be divorced from the information allegedly supplied to Officer Granias by his confidential informant. Without that information, not only would Granias' attention not have been drawn to Petitioner in the first place, but, even if by chance, Granias had stumbled across Petitioner and Mr. Muhammed in the rear area of 4224 North Ashland, Granias would not have known what significance to attach to the activity he claims to have observed.

Preventing the Petitioner from exploring, through cross-examination of the police officers, the veracity, reliability and basis of knowledge of the informant effectively deprived the court and, consequently, the Petitioner, of highly relevant evidence on the issue of whether probable cause to arrest existed. This was damaging to the truth-determining process as a whole but

also was easily avoidable. The officers, themselves, testified that they were aware of the basis of their informants knowledge. This was not a situation where the officers simply received an anonymous phone call at the district police station. No, this was quite different. The officers not only spoke to the informant at length over the telephone from the DEA offices, but they met the informant in person near the area where Petitioner would later be arrested. In their own words, the officers acknowledged that they were aware of the informant's basis of knowledge. Further, the record of what transpired between the officers and the informant confirms the same. The trial court, nevertheless, ruled that cross-examination into this area would not be allowed.

The appellate court goes on to render its stamp of approval to the trial court's efforts to justify the limitations it imposed on the Petitioner's cross-examination of the officers. In order to avoid the question of whether the informant's veracity, reliability and basis of knowledge were relevant to the probable cause determination, the trial court simply decided, and the appellate court agreed, to judge the person who provided information to Officer Granias not as an informant, in which case veracity, reliability and basis of knowledge would be in issue, but rather as a tipster. That way, no one, especially, the court, would have to concern themselves with such bothersome concepts as veracity, reliability and basis of knowledge; all that would need be done is ascertain whether corroboration exists and if so, then one could in good conscience infer that the information is reliable, thereby achieving a swift conclusion to the analysis.

Characterizing the provider of information in the Petitioner's case as a tipster rather than as a reliable source or confidential informant was simply not an option for the court. The officers, themselves, refer to the provider of information as their "confidential informant." And, curiously enough, the appellate court also adopts this designation on the first page of its order.

Further, the facts of the case demonstrate that the provider of information to Officer Granias was more than a simple tipster. He was a "confidential informant", just as the officers described. He contacted them at the DEA and even took it a step further by meeting with the officers in the area in question, supplementing the information that he had provided over the phone, and discussing with them the basis of his knowledge.

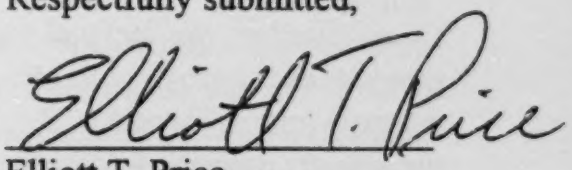
While it was possible for the court to have inferred certain things from the information provided by the informant, the court should not have been allowed to stop there. If that were all that was possible, then the position urged by Petitioner would be different. However, here, the court could have and should have allowed Petitioner's counsel to delve deeper into the veracity, reliability and basis of knowledge of the informant inasmuch as these issues dictated the perspective from which the historical facts leading up to the arrest should have been scrutinized.

For these reasons, the Petitioner respectfully requests that certiorari be allowed.

CONCLUSION

For the foregoing reasons, Petitioner Humberto Rodriguez respectfully prays that a writ of certiorari issue to review the judgment of the Illinois Appellate Court, First District.

Respectfully submitted,



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